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2004 OCT -5 P 4:25

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OCTOBER 5, 2004
U.S. DISTRICT COURT
DISTRICT OF MASS.

By Hand

Clerk of the Court
United States District Court
For The District Of Massachusetts
John Joseph Moakley U.S. Courthouse
One Courthouse Way
Boston, MA 02110

RE: William J. Murray v. TXU Corp., et al., Case No. 04-MBD10069 (NG)

Dear Sir/Madam:

I am writing to respectfully request that the motion to compel pending in the above referenced matter be scheduled for a hearing and/or referred to a Magistrate Judge for prompt resolution. This wrongful termination lawsuit (the "Lawsuit") was brought by Plaintiff William J. Murray ("Murray") against Defendants TXU Corp., TXU Energy Company LLC, and TXU Portfolio Management Company LP (the "TXU Defendants") under Section 806 of the Sarbanes-Oxley Act of 2002. In mid-January 2004, the TXU Defendants served a D. Mass. subpoena duces tecum on American National Power, Inc. ("ANP"), Murray's prior employer, seeking documents about Murray's ANP employment and termination. After ANP objected to the subpoena in its entirety and the parties were unable to resolve ANP's objections, the TXU Defendants, on March 5, 2004, filed their motion to compel ANP to produce the subpoenaed documents.¹

Although the briefing on the motion to compel was completed by the first week of May 2004, the Court has not yet ruled on the motion and ANP has not produced a single document responsive to the subpoena. In light of the foregoing as well as fact that the discovery deadline in the Lawsuit is **December 19, 2004**, one of the TXU Defendants' attorneys, Robert Wise, approached ANP's attorneys, Chris Carter, in early August 2004, about scheduling ANP's deposition under Federal Rule of Civil Procedure 30(b)(6) and amicably resolving the parties' dispute regarding the subpoena. In this regard, Mr. Wise sent Mr. Carter a proposed deposition notice/subpoena setting forth both the subject matters about which ANP would be asked to designate its representative(s) to testify and a revised production request with more specific document requests than in the original subpoena. Exhibit A hereto is a true and correct copy of

¹ ANP later filed motions to strike and for costs.

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Mr. Wise's August 10, 2004 email to Mr. Carter and the enclosed proposed deposition notice/subpoena.

Since then, Messrs. Wise and Carter have had numerous communications by telephone, email, and letter with respect to scheduling ANP's deposition and obtaining the documents the TXU Defendants need in connection with it. Exhibits B-G hereto are true and copies of the emails and correspondence between Messrs. Wise and Carter. Their efforts have been unsuccessful because the parties cannot agree upon either the documents that ANP will produce or the subject matters about which it will testify and because ANP is insisting that the TXU Defendants pay approximately \$18,000, representing its costs in connection with the pending motions, plus any costs it incurs in producing its documents.

As the discovery deadline in the Lawsuit is fast approaching and as the TXU Defendants need both ANP's deposition and documents to properly defend themselves in the Lawsuit, they respectfully request that the Court either set a hearing on the pending motion to compel at the earliest possible time or refer the matter to a Magistrate Judge for its prompt and expeditious resolution.

Thank you for your assistance in this matter.

Very truly yours,


Anita B. Bapooji

Enclosures

cc: The Honorable Judge Gertner (by hand delivery)
Christopher H.M. Carter, Esq. (by hand delivery)
Hal K. Gillespie, Esq. (by first class mail)
Yona Rozen, Esq. (by first class mail)
Robert Wise, Esq. (by first class mail)
Patricia S. Gill, Esq. (by first class mail)